

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-07
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O R 092058Z AUG 77 ZFF 4
FM AMEMBASSY BONN
TO SECSTATE WASHDC NIACT IMMEDIATE 0527
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USBERLIN
USMISSION NATO

C O N F I D E N T I A L SECTION 01 OF 04 BONN 13015

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E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: NEW PROPOSALS FOR MEASURES IN LORENZ CASE

REFS: (A) BONN 13009; (B) STATE 185678;
(C) BONN 12843; (D) BONN 12830;
(E) BONN 12813; (F) BONN 12441;
(G) BONN 12426

BEGIN SUMMARY: IT EMERGED FROM TODAY'S TRIPARTITE
DISCUSSIONS THAT THE FRENCH ARE DETERMINED TO EXPRESS
TO THE FRG, IN TOMORROW'S BONN GROUP DISCUSSION OF THE
LORENZ CASE, THEIR CONCERNS ABOUT THE BAUM STATEMENT
AND THE MAIHOFFER VISIT TO BERLIN. DE LABOULAYE HAS
RAISED THESE ISSUES WITH THE FRG AMBASSADOR IN PARIS
AND THE FRENCH REP HERE FEELS COMPELLED TO FOLLOW
UP, DESPITE OUR EFFORTS TO DISSUADE HIM ON GROUNDS
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THAT SUCH ACTION WILL RUN COUNTER TO NEEDED EFFORTS TO
RESTORE HARMONY TO THE BONN GROUP. IN DISCUSSING THE
BRITISH PROPOSALS FOR MEASURES WHICH MIGHT BE TAKEN
(REF A), THE US REP REPEATED THE POINTS MADE BY THE
DEPARTMENT IN RESPONSE TO THE FRENCH DEMARCHE AND
EXPRESSED A WILLINGNESS TO WORK TOWARDS COMPROMISE
SOLUTIONS. AS THE BRITISH PROPOSALS OFFER A POSSIBILITY

FOR DISSUADING THE FRENCH FROM DEMANDING THAT THE FRG
NOT DETAIL ATTORNEYS FROM KARLSRUHE, WE PROPOSE, UNLESS
INSTRUCTED TO THE CONTRARY, TO GIVE QUALIFIED SUPPORT
TO THEM AT TOMORROW'S MEETING, AS SPELLED OUT MORE
FULLY IN PARA 14 BELOW. ACTION REQUESTED: GUIDANCE,
IF POSSIBLE IN TIME FOR THE AUGUST 10 BONN GROUP
MEETING. END SUMMARY

1. THE ALLIED BONN GROUP REPS MET TRIPARTITELY ON
AUGUST 9 AT THE REQUEST OF THE UK REP FOR THE DUAL
PURPOSE OF REVIEWING THE RESPECTIVE ALLIED POSITIONS
AND DISCUSSING HOW TO APPROACH THE PROBLEM
OF THE LORENZ TRIAL WITH THE FRG AT A BONN GROUP
MEETING SCHEDULED FOR AUGUST 10. THE UK REP (EYERS)
NOTED THAT HE HAD ALREADY INFORMED THE OTHER TWO REPS
OF HIS INSTRUCTIONS (REF A) AND INQUIRED ABOUT THE
FRENCH AND AMERICAN POSITIONS.

2. THE FRENCH REP (RICHARD) SAID THAT THE FRENCH
POSITION HAD BEEN MADE CLEAR IN DEMARCHES IN
WASHINGTON AND PARIS. HE HAD SINCE BEEN INSTRUCTED TO
AWAIT THE GERMAN REACTION TO THE UK PROPOSALS (REF A)
AND TO OBTAIN NEW INSTRUCTIONS BEFORE MAKING THE FRENCH
PROPOSAL REGARDING THE KARLSRUHE ATTORNEYS (REF B) TO
THE GERMANS. RICHARD SAID THAT QUAI POLITICAL
DIRECTOR DE LABOULAYE HAD ALSO EXPRESSED TO THE FRG
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AMBASSADOR IN PARIS THE QUAI'S CONCERN ABOUT THE
LORENZ CASE AS WELL AS ABOUT THE BAUM STATEMENT ON

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C O N F I D E N T I A L SECTION 02 OF 04 BONN 13015

"LAND BERLIN" AND THE MAIHOFFER VISIT TO BERLIN (REF D).
HE SAID THAT HE DID NOT KNOW WHETHER DE LABOULAYE HAD
INFORMED THE GERMAN AMBASSADOR OF THE FRENCH PROPOSAL
REGARDING THE KARLSRUHE ATTORNEYS.

3. WITHOUT QUOTING THE REMARKS OF THE FRENCH DCM IN
WASHINGTON ON THE SUBJECT (REF B), THE US REP REFERRED
TO A RECENT CONVERSATION HE HAD WITH RICHARD AND SAID
HE ASSUMED THAT THE FRENCH DID NOT CONSIDER HOLDING THE
TRIAL IN BERLIN TO BE ILLEGAL, SINCE THE MATTER HAD
BEEN ALLOWED TO GO THIS FAR. HE ASKED RICHARD'S
CLARIFICATION OF FRENCH THINKING ON THIS POINT.
RICHARD SAID THAT THE FRENCH DID NOT CONSIDER THE TRIAL
ILLEGAL PER SE BUT WERE CONCERNED THAT IT WAS AT "THE
MARGIN OF LEGALITY." FOR THAT REASON, THEY WERE QUITE
CONCERNED ABOUT HOW IT WAS CONDUCTED.

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4. THE US REP SAID THAT HE HAD NO FORMAL INSTRUCTIONS
BUT OUTLINED THE DEPARTMENT'S VIEW AS EXPRESSED IN
RESPONSE TO THE FRENCH DEMARCHES (REF B). HE SAID
THAT, IDEALLY, WE WOULD PREFER TO GIVE THE FOREIGN
OFFICE'S ATTEMPTS TO CONTROL THE ADVERSE PUBLICITY A
CHANCE TO TAKE EFFECT AND NOTED THAT THERE HAD BEEN NO
PUBLIC STATEMENTS SINCE VAN WELL HAD SENT HIS LETTER,
WHICH WE CONSIDERED HELPFUL, TO THE JUSTICE
MINISTRY (REF E). US REP ADDED THAT GERMAN
SENSITIVITIES APPEARED NOW TO BE ENGAGED AND THAT IT
WAS IN OUR INTEREST TO MAINTAIN A COOPERATIVE RELATION-
SHIP WITH THE FRG. OUR BEST HOPE APPEARED TO LIE IN
HAVING THE FOREIGN OFFICE ON OUR SIDE RATHER THAN IN
FORCING IT INTO A POSITION OF DEFENDING WHAT THE
JUSTICE MINISTRY HAD DONE. ABOVE ALL, IT WAS ESSENTIAL
TO MAINTAIN WESTERN SOLIDARITY ON THIS QUESTION AND IN
THAT SPIRIT WE WERE PREPARED TO WORK TOWARD COMPROMISE

SOLUTIONS.

5. EYERS SAID HE DISAGREED WITH THE US REP'S EVALUATION OF THE FOREIGN OFFICE'S ABILITY TO EXERCISE A DEGREE OF CONTROL OVER THE JUSTICE MINISTRY AND SAID THAT IN VIEW OF GERMAN BUREAUCRATIC EMPHASIS ON MINISTERIAL LINES OF JURISDICTION ("KOMPETENZEN"), IT WAS NECESSARY TO FORCE THE FOREIGN OFFICE TO BECOME SUFFICIENTLY CONCERNED THAT IT WOULD ELEVATE THE MATTER TO THE FEDERAL CHANCELLOR'S OFFICE. HE ASKED WHETHER THE US REP THOUGHT EYERS' REMARKS AT THE LAST MEETING (REF C) WERE TOO STRONG. THE US REP REPLIED IN THE NEGATIVE BUT SAID HE HOPED IT WOULD BE POSSIBLE TO AVOID REPEATING THE POINTS MADE IN THE HOPE OF CONCENTRATING ON COOPERATIVE MEASURES THAT COULD BE TAKEN IN A DAMAGE-LIMITING OPERATION.
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6. EYERS ADDED THAT REMARKS MADE LAST TIME WERE MERELY PERSONAL ONES BUT THAT THEY NOW HAD BEEN CONFIRMED BY LONDON AND HE THOUGHT THIS POINT SHOULD BE MADE. THE US REP SUGGESTED THAT IT WAS PERHAPS ADEQUATE TO SAY THAT THE PRIOR REMARKS HAD BEEN SUPPORTED BY LONDON.

7. THE DISCUSSION THEN TURNED TO CONSIDERATION OF THE STEPS PROPOSED BY LONDON (REF A). EYERS ASKED RICHARD WHETHER, AS A MATTER OF TACTICS, THE FRENCH COULD LEAD OFF WITH A SUGGESTION REGARDING WITHDRAWAL OF THE KARLSRUHE ATTORNEYS ALONG THE LINES OF THE DEMARCHES MADE IN LONDON AND WASHINGTON. HE SAID THAT THIS POSITION, WHICH IS SUBSTANTIALLY HARDER THAN THE UK POSITION, WOULD ENABLE HIM TO PUT FORTH THE UK PROPOSALS AS A COMPROMISE. RICHARD REPLIED THAT HIS INSTRUCTIONS WERE TO AWAIT THE GERMAN REACTION TO THE UK PROPOSALS AND REQUEST NEW INSTRUCTIONS BUT THAT HE WOULD INQUIRE OF PARIS WHETHER EYERS' PROPOSAL IS ACCEPTABLE. HE ALSO SAID THAT, IN ANY CASE, HE COULD STATE FRENCH CONCERN IN STRONG TERMS AND OFFER PERSONAL SUPPORT TO THE UK PROPOSALS.

8. THE US REP SAID THAT HE WOULD REPORT THE UK PROPOSALS AND SEEK INSTRUCTIONS, WHICH HE HOPED WOULD ARRIVE IN TIME FOR THE AUGUST 10 MEETING. HE RECALLED THAT THE DEPARTMENT HAD ALREADY APPROVED THE IDEA OF AN ALLIED PRESS STATEMENT (REF G). AS FOR THE "PRACTICAL MEASURES" PROPOSED BY LONDON (USING THE LETTERING IN PARA 4 OF REF A), US REP STATED RE PROPOSAL "A" (TO HAVE OBERLE AND HELDENBERG FORMALLY APPOINTED TO LEAD THE PROSECUTION) THAT, WHILE IT WAS ONE THING FOR THE

ALLIES TO PERSUADE THE GERMANS THAT OBERLE SHOULD

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FM AMEMBASSY BONN
TO SECSTATE WASHDC NIACT IMMEDIATE 0529
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
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APPEAR TO LEAD THE PROSECUTION, IT WAS ANOTHER FOR US
TO SEEK TO DETERMINE HOW THE PROSECUTION WAS IN FACT TO
BE CONDUCTED. THIS IS AN IMPORTANT CASE FOR THE
GERMANS AND IT WOULD BE UNFORTUNATE FOR US TO HAVE A
POTENTIALLY ADVERSE EFFECT ON THE CASE BY SEEKING TO
SUBSTITUTE OUR JUDGMENT FOR THEIRS AS TO WHO THE MOST
COMPETENT PROSECUTORS MIGHT BE. HE SAID THAT WE SHOULD
FIRST ASK THE GERMANS WHETHER A FORMAL APPOINTMENT OF
OBERLE AS THE CHIEF PROSECUTOR (AS OPPOSED TO THE FRG'S
HAVING HIM PRESENT AT THE TRIAL AND EVEN BEING THE
OFFICIAL SPOKESMAN FOR THE PROSECUTOR'S OFFICE) COULD
BE MADE WITHOUT DIRECTLY AFFECTING THE CONDUCT OF THE
TRIAL IN A MANNER THE GERMANS DID NOT FAVOR. WITH
RESPECT TO PROPOSAL "B" (HAVING THE KARLSRUHE
ATTORNEYS "ASSIGNED" TO BERLIN FOR THE DURATION OF THE
TRIAL), WE SAID THAT WE DID NOT BELIEVE WE SHOULD
BECOME INVOLVED IN THE MANNER OF ASSIGNMENT AND NOTED
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THAT THE GERMANS HAD ALREADY INFORMED US (REF F) OF THE METHOD OF DETAILING THE ATTORNEYS TO BERLIN. HAVING THE ATTORNEYS APPEAR TO BELONG TO THE BERLIN OFFICE IS, OF COURSE, INDEPENDENT FROM THE METHOD IN WHICH THEY ARE ASSIGNED THERE. WITH RESPECT TO PROPOSALS "C" AND "D" (MAKING THE ORDER ASSIGNING THE ATTORNEYS TO BERLIN PUBLIC AND MAKING FUTURE OFFICIAL STATEMENTS IN BERLIN, NOT BONN OR KARLSRUHE), WE SUGGESTED THAT THESE WERE REASONABLE SUGGESTIONS WHICH WE COULD RECOMMEND TO THE DEPARTMENT.

9. EYERS RESPONDED THAT THE POINTS MENTIONED ARE ONLY ILLUSTRATIVE OF POSSIBLE STEPS WHICH COULD BE TAKEN AND THAT IF ANY OF THEM ARE IMPOSSIBLE, IT SHOULD BE POSSIBLE TO SEEK OTHER MEASURES. HE SAID THAT HE CONSIDERED THE ALLIED PRESS STATEMENT PLUS MEASURES "A" AND "C" TO BE THE MOST IMPORTANT. HE NOTED THAT "C" COULD PROBABLY BE INCLUDED IN THE FRG'S PROPOSED PRESS STATEMENT (REF E), IF IT CAN BE MADE CLEAR THAT THE ATTORNEYS PARTICIPATING IN THE CASE BELONG TO THE BERLIN OFFICE.

10. RICHARD REPEATED HIS EARLIER STATEMENT REGARDING HIS INSTRUCTIONS. HE THEN WENT ON TO SAY THAT WE SHOULD ENSURE THAT APPROPRIATE SECURITY IS PROVIDED FOR THE TRIAL AND THAT ARRANGEMENTS SHOULD BE MADE WELL IN ADVANCE FOR ANY POLICE REINFORCEMENTS FROM THE FRG TO BE FORMALLY APPROVED BY THE ALLIES, E.G. BY A BK/L.

11. RICHARD THEN RAISED THE BAUM STATEMENT AND SAID THAT THE FRENCH WERE CONCERNED ABOUT THE RESPONSE VAN WELL HAD MADE TO SOVIET CHARGE TOKOVININ'S PROTEST ON THE MATTER (BEING REPORTED SEPTEL). HE SAID THAT PARIS CONFIDENTIAL

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CALLED BAUM'S THESIS THAT OF THE NIEKISCH CASE AND NOTED THAT THIS INTERPRETATION HAD BEEN REJECTED BY THE ALLIES IN 1967 AND WAS NOT ACCEPTED BY THEM EVEN THOUGH WE ACCEPT THE USE OF "LAND BERLIN" IN TREATIES. RICHARD SAID HE FELT COMPELLED TO RAISE THIS AT BONN GROUP SINCE DE LABOULAYE HAD RAISED IT WITH THE FRG AMBASSADOR.

12. THE US REP SUGGESTED IT WOULD BE BETTER TO AVOID THIS RATHER EMOTIONAL ISSUE AT THIS JUNCTURE SINCE IT WOULD ONLY LEAD TO A DEBATE WITH THE FRG REPS WHICH WOULD SERVE NO PURPOSE. WE CANNOT CONVINCE THEM NOR CAN THEY CONVINCE US. HE SAID THAT THE APPROPRIATE TIME

TO DISCUSS OUR VIEWS ABOUT BAUM'S STATEMENT WOULD BE AT THE TIME THAT WE DRAFT A REPLY TO THE SOVIETS. EYERS FELT NO COMPULSION TO RAISE THE MATTER BUT RICHARD REPEATED THAT HE DID.

13. RICHARD THEN REPEATED FRENCH CONCERN ABOUT THE MAIHOFFER VISIT TO BERLIN (REF D) AND ESPECIALLY MAIHOFFER'S REPORTED REMARKS THAT THE FEDERAL GOVERNMENT ALONE CAN GIVE ORDERS TO THE FEDERAL PROSECUTOR. HE SAID THAT THE SOVIETS MAY OBJECT TO THIS AND THAT WE SHOULD RAISE IT AGAIN WITH THE GERMANS. WE AGAIN EXPRESSED OUR VIEW THAT NO PURPOSE WOULD BE SERVED AT THIS TIME SINCE IT WAS DISCUSSED RATHER FULLY AT THE LAST MEETING.

13. COMMENT: IT IS OBVIOUS THAT THE FRENCH, AND TO A LESSER DEGREE THE BRITISH, ARE DETERMINED TO CONTINUE DISCUSSIONS OF THESE MATTERS IN A WAY WHICH WE DO NOT BELIEVE WILL BE HELPFUL. WHILE WE HAVE ATTEMPTED TO RESTRAIN OUR ALLIED COLLEAGUES, WE DO NOT

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O R 092058Z AUG 77 ZFF 4
FM AMEMBASSY BONN
TO SECSTATE WASHDC NIACT IMMEDIATE 0530
INFO AMEMBASSY BERLIN
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YET KNOW HOW SUCCESSFUL THIS WILL BE. WE BELIEVE,

HOWEVER, THAT IT WILL BE ESSENTIAL TO AGREE AD REF TO SOME OF THE CONCRETE MEASURES ALONG THE LINES THE BRITISH HAVE PROPOSED IN ORDER TO MAINTAIN A DEGREE OF ALLIED UNITY ON THIS ISSUE. RICHARD'S STATEMENT THAT HIS CURRENT INSTRUCTIONS ARE NOT TO MAKE THE FRENCH PROPOSAL REGARDING THE KARLSRUHE ATTORNEYS UNTIL PARIS CAN CONSIDER THE FRG REACTION TO THE UK PROPOSAL SEEMS TO INDICATE THE FRENCH MAY BE PREPARED TO WITHDRAW FROM A POSITION BOTH WE AND THE BRITISH CONSIDER UNTENABLE.

14. AS FOR THE SPECIFIC MEASURES PROPOSED BY THE BRITISH, WE PROPOSE, UNLESS INSTRUCTED TO THE CONTRARY, TO TAKE THE FOLLOWING POSITIONS AT TOMORROW'S MEETING, INDICATING THAT THESE REPRESENT ONLY EMBASSY VIEWS AND THAT OUR DEFINITIVE POSITION MUST AWAIT INSTRUCTIONS:
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-- PROPOSAL "A" (FORMALLY APPOINTING OBERLE TO LEAD THE PROSECUTION): WE WOULD STATE THAT THIS SEEMS DESIRABLE AND CONSISTENT WITH THE SPIRIT OF THE AGREEMENT REACHED LAST YEAR, AND WOULD ASK THE FRG TO GIVE AN URGENT OPINION ON WHETHER SUCH AN APPOINTMENT WOULD CREATE ANY LEGAL DIFFICULTIES IN THE CONDUCT OF THE TRIAL.

-- PROPOSAL "B": AS THE DEPARTMENT HAS ALREADY AGREED THAT THE METHOD OF DETAILING THE KARLSRUHE LAWYERS TO BERLIN IS ACCEPTABLE, WE WOULD NOT SUPPORT THE PROPOSAL FOR SOME MORE FORMAL "ASSIGNMENT" BUT WOULD AGREE WITH THE DESIRABILITY OF HAVING THEM REMAIN IN BERLIN FOR THE DURATION OF THE TRIAL AND AVOIDING OSTENTATIOUS COMMUTING BETWEEN BERLIN AND KARLSRUHE.

-- PROPOSALS "C" AND "D": WE WOULD SUPPORT BOTH THESE PROPOSALS.

-- ALLIED PRESS STATEMENT: WE WOULD RECALL THAT THE DEPARTMENT HAS ALREADY APPROVED USE OF THE STATEMENT IN REF (G) IN RESPONDING TO PRESS INQUIRIES AND WOULD SUPPORT THE BRITISH RECOMMENDATION THAT THE STATEMENT BE USED AS SOON AS POSSIBLE.

15. ACTION REQUESTED: GUIDANCE.
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Message Attributes

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